

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
U.S. Department of Justice)	
Environment and Natural Resources Division)	
Environmental Enforcement Section)	
P.O. Box 7611, Ben Franklin Station)	
Washington, D.C. 20044)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No.
THE DISTRICT OF COLUMBIA,)	
Serve:)	
Peter J. Nickles)	
Interim Attorney General for)	
the District of Columbia)	
Office of the Attorney General)	
441 4th Street NW)	
Washington, D.C. 20001)	
)	
Defendant.)	
)	
)	

COMPLAINT

The United States of America, for and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action instituted pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, seeking reimbursement of funds expended by the United States in response to a release and threatened release of mercury -- a hazardous substance -- in and around two high schools located

in, and operated by, agencies of the District of Columbia. The United States also seeks a declaratory judgement, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, on the Defendant's liability for further response costs that will be binding in any subsequent action or actions to recover such costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue in this District is proper pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b).

DEFENDANTS

4. Defendant District of Columbia is the operator, through the District of Columbia Board of Education and District of Columbia Public Schools, of the two high schools from which the releases of mercury occurred.

GENERAL ALLEGATIONS

5. This action involves the release of mercury in and around two high schools located in the District of Columbia, first from Ballou Senior High School in 2003 ("Site 1") and second from Cardozo High School in 2005 ("Site 2").

Site 1: Ballou Senior High School

6. On or about October 2, 2003, a student entered an unlocked chemistry laboratory at Ballou Senior High School ("Ballou") during regular school hours and removed a container of at least 250 milliliters of mercury. The mercury was spread to other areas of the school.

7. The school dismissed the students for the day without any screening for mercury

contamination or other inspection. Many students traveled home on Metro buses and other public transportation.

8. On October 3, 2003, local authorities removed visible droplets of mercury from areas within Ballou. School officials requested EPA's technical assistance and advice in addressing the mercury contamination at the school.

9. Subsequently, the District of Columbia conducted the clean-up in and around the school. It found mercury in many areas, including on floors, sinks, sink traps, ceiling tiles, table tops, and door handles.

10. Over the next several weeks, EPA rendered assistance to the District of Columbia in various ways. On October 3 and 4, 2003, EPA conducted air monitoring within the school to ascertain the level and areas of contamination. On October 3, it detected a maximum breathing zone reading of 11 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) on the second floor of the school and on October 4 it detected 12.7 $\mu\text{g}/\text{m}^3$ on the first floor.

11. EPA screened the residence of the student suspected of taking the mercury from the school laboratory and found a dresser with mercury contamination of more than 30 $\mu\text{g}/\text{m}^3$. EPA removed the dresser and ventilated the home to remove mercury vapors. EPA also assisted the District of Columbia with screening over 1,200 students, teachers and employees of Ballou High School and over 300 bags of personal items, such as clothing and books, for mercury vapors.

12. EPA also assisted the District of Columbia in screening the homes of those individuals whose bagged clothing showed levels of mercury above 10 $\mu\text{g}/\text{m}^3$. It screened over 125 homes, at least nine of which were evacuated. The District of Columbia contractor

remediated 11 homes and an apartment complex common area based on the screening.

13. EPA monitored the air at Ballou High School and potentially affected residences for mercury vapors, provided technical advice and support to the District's contractor, and continued to provide other assistance to the District of Columbia during the clean-up of the mercury.

Site 2: Cardozo High School

14. On February 23, 2005, a student at Cardozo High School dropped more than two ounces of mercury onto the floor. The mercury spread to other areas of the school.

15. The Cardozo school officials gathered the students in the auditorium to control the release. The District of Columbia Fire Department, Department of Health, and Emergency Management Agency arrived and screened 600 high school students. They collected the students' contaminated clothing into plastic bags for assessment.

16. The District requested EPA's assistance with the assessment and clean-up operation. EPA conducted initial air monitoring for mercury and detected a maximum breathing zone reading of $71 \mu\text{g}/\text{m}^3$ on the first and ground floors.

17. EPA conducted the clean-up at those areas and, over the next few days, at five areas of concern within the school.

18. EPA prepared and shipped 20 drums of mercury contaminated debris for off-site disposal.

19. EPA and District officials announced that the school was ready to reopen on February 28, 2005. On March 2, 2005, however, the District Department of Health again detected mercury in a stairwell in the school. Clean-up activities resumed until mercury vapor

screening showed that the clean-up goals had been reached.

20. Shortly thereafter, however, another release of mercury occurred. EPA and the District performed a thorough search of the school for possible sources of mercury, including thermostats and containers in laboratories. In the course of that search, EPA found containers of old or poorly labeled hazardous substances, including mercury, in six laboratories in the school that were not part of the initial release and clean-up. The District Fire Department condemned the laboratories and restricted access to them.

21. EPA continued to provide assistance and support to the District of Columbia until the clean-up activities were complete and Cardozo High School could reopen.

22. Mercury is a hazardous substance that can have neurological effects on humans. Children are particularly susceptible to its effects. Exposure can occur through breathing its vapors, through direct contact with skin, or through eating food or drinking water contaminated with mercury.

23. The United States' actions at or in connection with the two Sites, as described above, were "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601 (25).

24. To date, EPA has incurred at least \$1,101,703.74 in unreimbursed response costs at the two Sites.

CLAIM FOR RELIEF

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. The Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

27. Mercury is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

28. Ballou High School and the residences involved in Site 1 are a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). Cardozo High School is also a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

29. There was a “release” or substantial threat of release of mercury within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), from each facility into the “environment” as defined in Sections 101(8) of CERCLA, 42 U.S.C. § 9601(8).

30. The United States has incurred response costs in connection with Sites 1 and 2. All such costs were incurred not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan. 40 C.F.R. Part 300 (“NCP”).

31. Defendant is within the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

32. Defendant is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs incurred by the United States not inconsistent with the NCP, in connection with the response actions at the two Sites.

PRAYER FOR RELIEF

Wherefore, Plaintiff, the United States of America, requests that this Court:

- A. Enter an Order providing that Defendants reimburse the United States for all response costs incurred in connection with the response actions conducted at the two Sites, together with the interest and all costs of enforcement;

- B. Enter a declaratory judgment on liability for further response costs that will be binding in any subsequent action by the United States against the Defendants to recover such further response costs; and
- C. Provide such other and further relief as may be just and proper.

Respectfully submitted,

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